

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Petition of the Nebraska)	Application No. NUSF-77
Telecommunications Association for)	
Investigation and Review of Processes and)	AT&T's INITIAL COMMENTS
Procedures Regarding the NUSF)	

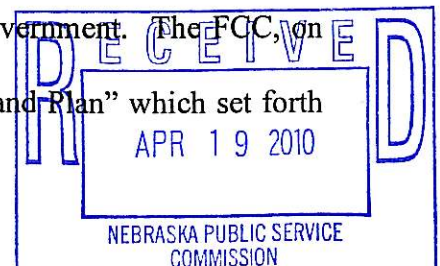
AT&T'S INITIAL COMMENTS

Pursuant to the Nebraska Public Service Commission's (the "Commission") March 10, 2010, Order Setting Procedural Schedule in the above captioned matter AT&T Communications of the Midwest, Inc. and TCG Omaha, Inc., (collectively referred to as "AT&T") submit its initial comments concerning the Commission's investigation into the Nebraska Universal Service Fund's ("NUSF") policies, processes and procedures.

The telecommunications industry has changed dramatically since 1983 when competition was first introduced in the telecommunications market by allowing multiple carriers the opportunity to compete for long distance customers. Since that time, competition has been introduced into the local exchange market and the circuit-switched legacy network has begun the transition to a broadband and IP-based communications network. As more and more services migrate to broadband and IP-based services, substantial pressure is created on the traditional regulatory framework that governs much of today's communications, including in particular universal service and intercarrier compensation. This situation also creates an opportunity, at both the state and federal levels, for strategies to attain the national goal of universally available and affordable broadband service throughout the state of Nebraska, as well as the rest of the nation.

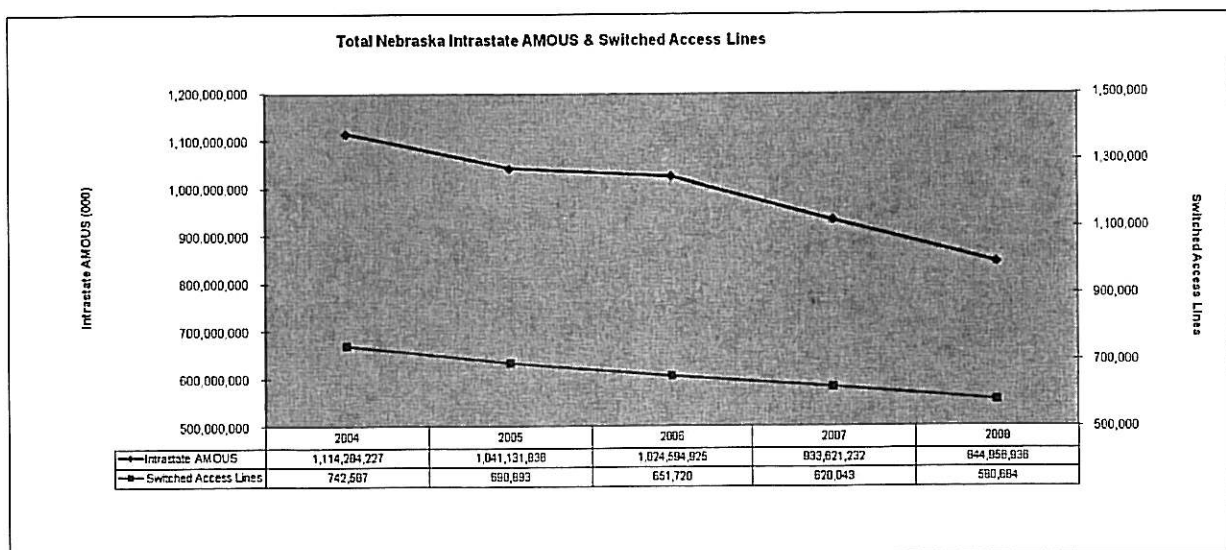
Broadband and IP-based services are transforming the way Americans live, work, obtain health care, manage energy, educate our children and interact with government. The FCC, on

March 17, 2010, released "Connecting America: The National Broadband Plan" which set forth



comprehensive recommendations and goals seeking to attain the goal of universal broadband service. Although the transition to an all broadband world will take some period of time to achieve, it is not too early for Nebraska to begin thinking about what it can and should do to help achieve these goals. Commendably the Nebraska Legislature, as well as the Commission, have long recognized the important role states must play in providing support for the infrastructure facilities that fulfill universal service objectives. AT&T believes that Nebraska will continue to play an important role in the broadband world, though many issues will need to be considered and addressed.

The choices available to consumers today are vastly different than the marketplace of yesterday where the only way to complete a telephone call was through the local telephone network over a black rotary dial phone. In looking at the graph below¹, which depicts trends for access lines, as well as intrastate toll minutes, from 2004 through 2008, one can see very clearly what the future is for plain old telephone service (“POTS”) in Nebraska.



¹ The intrastate AMOUs were estimated by AT&T. The interstate MOUs as reported to NECA was divided by the AT&T PIU factors that were also adjusted to capture the intrastate LEC to LEC IntraLATA minutes to estimate total industry interstate and intrastate demand. The NECA interstate demand was subtracted from the total demand to derive intrastate demand. The access lines were obtained from the Universal Service Fund Data Submission filed for years 2004 through 2008 for the ROR & mid-size price cap carriers & from the annual filing cost support for years 2005 through 2009 for Qwest.

Access lines, as well as intrastate toll minutes are declining. Customers are no longer satisfied with POTS and the customers who are keeping POTS are using it less. Wireless phones, VoIP, email, instant messaging, blogs and social networking sites have greatly reduced the need for legacy voice services, even for customers who retain POTS service. Between 2004 and 2008, annual minutes of use decreased 24.2%, and switched access lines decreased 21.8%.

Unfortunately, the current regulatory structure in Nebraska focuses entirely on a rapidly obsolescing POTS network architecture and business model. AT&T would suggest that now is the time for the Commission to begin down the path to complete fundamental reform of its policies to incent companies to invest in and deploy the broadband, any-application infrastructure that customers are demanding. The model that piles “long distance” service on top of “basic local exchange service,” and on which the current universal service support mechanisms are based, is increasing anachronistic. Requiring network providers to maintain this business model via carrier of last resort requirements and irrational intercarrier compensation mechanisms will force providers to divert resources to maintain an increasingly inefficient and obsolete network. Without the flexibility to make business models consistent with what consumers want and what technology can deliver, network providers will invest less in advanced technology and may temper their marketing efforts to avoid causing a complete collapse of a business model that they might otherwise not try to maintain.

In the Comments filed by the Commission *In the Matter of the Role of the Universal Service Fund and Intercarrier Compensation in the National Broadband Plan* before the FCC, the Commission set forth five general principles which it recommended the FCC consider in developing the universal service and intercarrier compensation components of the National

Broadband Plan. Specifically, the Commission recommended that the FCC consider the following principles:

- 1) We encourage the Commission to actively work with states in partnership to develop ideas and create innovative solutions to the challenges posed by barriers to broadband deployment.
- 2) The Commission must establish a contribution methodology that clearly defines the obligations of all providers; and, all providers regardless of technology must be included.
- 3) All states should have a responsibility to supplement the federal mechanism and to compliment the universal service goals developed by the Commission.
- 4) Support should be targeted to high-cost areas where broadband services are not being deployed and would not be deployed absent universal service support.
- 5) The Commission should require better reporting of high-cost and Lifeline/Link-up support to avoid potential misuse of universal service support monies.²

AT&T agrees with these general principles and applauds the Commission's efforts. Additionally, AT&T advocates that as the Commission considers whether, and how, to transfer its NUSF support mechanisms to a broadband world, that it too should consider these general principles at the state level.

As the Commission begins its review of the policies, processes and procedures regarding the NUSF, the Commission should first complete what it started back in 1999. It was at this time that the Commission took a very forward looking step and did what it was instructed to do by the Telecommunications Act of 1996, i.e. begin to remove implicit subsidies that were placed on

² See *In the Matter of A National Broadband Plan for our Future, International Comparison and Consumer Survey Requirements in the Broadband Data Improvement Act and Inquiry Concerning the Deployment of Advance Telecommunications Capability to All Americans in a Reasonable and Timely Fashion*, GN Docket Nos. 09-51, 09-47 and 09-137, FCC, Comments of the Nebraska Public Service Commission at 1-2 (December 7, 2009).

intrastate switched access rates, set benchmarks for local rates, and implemented the NUSF.³ Unfortunately, the Commission adopted a policy to lower intrastate access charges to the level of the interstate access rates in effect in 1999, as opposed to requiring on-going parity. Switched access rates in 1999, as well as still today, contain implicit subsidies and are priced way above cost.

The Commission acknowledged the existence of implicit subsidies in its January 13, 1999 Findings and Conclusions in Application No. C-1628 where it found:

In the past, universal service has been funded through a conscious policy of pricing certain incumbent local exchange carriers' (ILEC) services such as access service, toll service and local business service at levels that support primarily residential service. The "implicit subsidies" contained in these charges are and have been used to keep local residential exchange rates affordable for all subscribers. This policy was adopted by both federal and state regulators and implemented by the telecommunications industry.

Due to the opening of ILEC markets to competition, this subsidization practice is no longer desirable. As a result, the rates for services that provide implicit support should be reduced. The lost support may, over a reasonable period of time, be replaced through increases in rates and by state and federal universal service funds.⁴

Since 1999 the market has transformed and is an entirely different market. Competition is alive and well in the state of Nebraska. Most Nebraskans have numerous options for local service, and in the long distance market there are over 300 interexchange carriers ("IXCs") offering service in Nebraska. This is vastly different from when the intrastate switched access regime was established 1983. The local market has transformed from a monopoly market and is

³ See *In the Matter of the Application of the Nebraska Public Service Commission, on its own motion, seeking to conduct an investigation into intrastate access charge reform*, Application No. C-1628, Findings and Conclusions (January 13, 1999). In 1997, the Nebraska Legislature enacted the Nebraska Telecommunications Universal Service Fund Act ("NTUSFA") for the purpose of providing the Commission with the power to "establish a funding mechanism which supplements federal and universal support mechanisms and ensures that all Nebraskans, without regard to their location, have comparable accessibility to telecommunications services at affordable rates." Neb. Rev. Stat. § 86-317.

⁴ *Id.* at 2.

now full of competitive alternatives for customers that include competitive local exchange carriers ("CLECs"), as well as wireless and VoIP providers.

As new technologies and providers entered the market, different standards were applied for establishing rates for local interconnection (reciprocal compensation) than were used for interconnection for toll services (switched access charges) even though all providers were using the same local network and facilities. The rates for local interconnection are much lower than the current intrastate switched access rates being applied to interconnection for toll services. In addition, the interstate switched access rate is much lower than the current intrastate switched access rates. The end result is that there are different providers using different technologies providing similar services paying at different rates for the use of the same existing local network. This creates a significant competitive disadvantage for those providers that are required to pay high intrastate switched access charges.⁵ Moreover, the current access regime has resulted in a multitude of problems⁶ and, if not changed, will continue to result in more problems as different technologies emerge into the marketplace making this subsidy mechanism unsustainable in the long term.

AT&T asserts that the Commission needs to complete what it started back in 1999, and address the current regime of access in Nebraska and remove the implicit subsidies from the intrastate switched access rates and make the subsidies explicit. In enacting the NUSF, and establishing the guiding principles of how best to ensure the preservation and advancement of universal services, the Nebraska Legislature stated "[t]he implicit support mechanisms in

⁵ "When a subsidy is left in access charges it is primarily paid by interexchange carriers (hereinafter "IXCs") and their customers. The Commission does not believe that this is equitable and nondiscriminatory." *In the matter of the Commission, on its own motion, seeking to conduct an investigation into intrastate access charges reform and intrastate universal service fund*, Application No. C-1628/NUSF, Progression Order #11 at ¶ 6 (September 12, 2000).

⁶ Phantom traffic, traffic pumping, and arbitrage to name a few.

intrastate access rates throughout the state may be replaced while ensuring that local service rates in all areas of the state remain affordable.”⁷ The Commission could do so by doing two things:

(a) requiring providers to increase their local rates to the relevant state benchmarks; and (b) allow those who have the need to continue to recover from the NUSF.⁸

As a result, some of the issues the Commission should consider in this docket are as follows:

- (1) Determine a timeframe for intrastate switched access rates to mirror the interstate switched access rates and structure for all incumbent and competitive local exchange carriers.
- (2) Determine if switched access rates should be transitioned further to the level of reciprocal compensation rates. If so, what timeframe is appropriate for such a transition?
- (3) Review the existing local rate benchmarks to determine if they are appropriate in today’s marketplace or if they need upward adjustment.
- (4) Identify any lost access revenues not being recovered through local rates and determine if addition explicit access rebalancing support should be provided by the NUSF.
- (5) If lost access revenue support is deemed appropriate, determine whether such support should be limited to incumbent local exchange companies only or to other providers as well.
- (6) Determine whether implicit subsidies should be removed via a transition or a flash cut.
- (7) Determine how to stabilize support mechanisms for providers who need such support in order to ensure that access to telecommunications services remains affordable while removing the implicit subsidies in access?

⁷ Neb. Rev. Stat. § 86-323(7).

⁸ “[I]t is the position of the Commission that these subsidies should first come from the basic local exchange customers that create the costs until the basic local exchange service rates reach the Commission adopted benchmarks. After basic local exchange rates reach the Commission adopted benchmarks, any remaining subsidies removed should come from the NUSF. This will ensure that all users of telecommunications services contribute to universal service in a competitive and nondiscriminatory manner.” *In the matter of the Commission, on its own motion, seeking to conduct an investigation into intrastate access charges reform and intrastate universal service fund*, Application No. C-1628/NUSF, Progression Order #11 at ¶ 6 (September 12, 2000) at . ¶ 9.

AT&T appreciates the opportunity to comment in this very important docket and looks forward to participating in this docket in the future.

Respectfully submitted this 19th day April, 2010.

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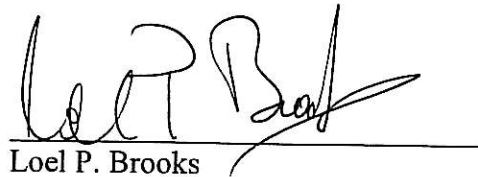
CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 19th day of April, 2010, an original, six copies and an electronic copy of AT&T's Initial Comments in Docket No. NUSF-77 were delivered to:

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